

1 Daniel L. Rottinghaus, Esq., State Bar No. 131949
2 Paul W. Windust, State Bar No. 167338
2 **BERDING & WEIL LLP**
3 3240 Stone Valley Road West
3 Alamo, California 94507
4 Telephone: 925/838-2090
4 Facsimile: 925/820-5592

5 Attorneys for Plaintiff
6 ROBERT L. YOUNG
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 ROBERT L. YOUNG,

12 Plaintiff,
13
14 vs.
15 ILLINOIS UNION INSURANCE
16 COMPANY; ACE WESTCHESTER
17 SPECIALTY CLAIMS; and DOES 1
18 through 50, inclusive,
19 Defendants.

No. **C 07-05711 SBA**

**AMENDED NOTICE OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT; CERTIFICATION
OF PRE-FILING MEET AND
CONFER**

**DATE: 9/23/08
TIME: 1:00 p.m.
CTRM: 3**

[FRCP 56(a) and (b)]

20 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

21 AMENDED NOTICE IS HEREBY GIVEN that on September 23, 2008, at
22 1:30 p.m., or as soon thereafter as counsel may be heard by the above-entitled
23 Court, located at the United States Northern District Court, Oakland Division, 1301
24 Clay Street, Oakland, California, Department 3, Plaintiff Robert L. Young
25 ("Young") will and hereby does move the Court under FRCP 56 for an order
26 granting partial summary judgment of the issue that defendants owed their insured,
27 Young, a duty to defend him against Cross-Complaints filed in a lawsuit titled *TRI*
28 *Commercial Real Estate Services, Inc., et al. v. Raybern Foods, Inc., et al.*,
Alameda County Superior Court Case No. RG04141329, and breached that duty.

1 The basis for this motion is that there was potential coverage for the claims
2 asserted in the underlying litigation and Cross-Complaints by Raybern and John
3 Fults against defendants' insured, Young, and therefore defendants owed Young a
4 duty to defend him in the underlying litigation and Cross-Complaints.

5 This motion is based upon this Notice and Motion, the accompanying
6 Memorandum of Points and Authorities, Declaration of Paul W. Windust, and
7 Declaration of Robert L. Young. The motion is further based on the Court's files
8 and records in this action and on such other oral argument or documentary evidence
9 as may be received by the Court at the hearing of the motion.

10 Plaintiff hereby certifies that he has met and conferred, by and through
11 counsel with defendant prior to the filing of this motion as required by Rule.

12 Date: August __, 2008

BERDING & WEIL LLP

14 By: _____

15 Paul W. Windust
16 Attorneys for Plaintiff
17 ROBERT L. YOUNG

18 O:\WDOCS\0001\392\PLD\00479486.DOC